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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,935	12/09/2003	Mariana Tajada	14552.0001US01	6657
23552	7590	03/29/2005		EXAMINER
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				WARE, DEBORAH K
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/731,935	TAJADA, MARIANA
	<b>Examiner</b>	<b>Art Unit</b>
	Deborah K. Ware	1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 November 2004.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
  - 4a) Of the above claim(s) 5,11 and 12 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 6-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12/9/03 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)<br>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)<br>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____<br>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)<br>6) <input type="checkbox"/> Other: _____ |
|---|--|

**DETAILED ACTION**

Claims 1-12 are pending.

***Election/Restrictions***

Claims 5 and 11-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention. Applicant timely traversed the restriction (election) requirement in the reply filed on November 8, 2004. Applicant's election with traverse of Group I in the reply filed on November 8, 2004 is acknowledged. The traversal is on the ground(s) that the method claims depend from the product claims as newly amended. This is not found persuasive because the method claims remain to have one way distinctness and are different from the product claims in that the method claims require process steps which would place a serious burden on the examiner to have to search for each independent step which is not necessary to search for the product of which can be made by a different method and still be the same product per se. Therefore, there are still two separate and distinct searches which would be required of the examiner in order to examine two distinctly and different claimed inventions with respect to required features. While one reference may read on the product it would not necessarily read on the method claims. However, the restriction is not being made final at this time and once allowable subject matter has

been determined with respect to the elected product claims, the claimed methods requiring any possible allowable product claim can be rejoined with them and the restriction requirement removed.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 8 are rendered vague and indefinite for the recitation of bacteria, *Bacillus subtilis*, in a Markush Group directed to fungi and yeast. This renders the claims unclear as to whether Applicants intend bacteria in the Markush Group.

***Claim Objections***

Claims 6-8 are objected to for these reasons:

Claim 6 and 8 are objected to because of the following informalities: for the misspelling of "saccarose" and "Basillus", and because the species of each genus for each microorganism component in the Markush Group is capitalized when it should be lower case for proper reference to their recognized syntax in the microbial arts, wherein the genus is always capitalized and the species is lower case but both genus and species are underlined or italicized. Appropriate correction is required.

Claim 7 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 360196185A abstract in view of Gottlieb, both cited on enclosed PTO-892 Form.

Claims are drawn to culture medium comprising monobasic potassium phosphate, ammonium chloride, magnesium sulfate, saccharose and water for culturing yeast or fungi. Further the yeast may be selected from *Saccharomyces cerevisiae*.

JP Patent teaches culturing *Saccharomyces cerevisiae* in a culture medium which comprises ammonium chloride, magnesium sulfate, and saccharose, see the abstract.

Gottlieb teaches culture medium comprising monobasic potassium phosphate and water for detecting yeast (*Saccharomyces*). Note column 9, lines 6 and 12.

The claims differ from JP Patent abstract in that monobasic potassium phosphate is not disclosed.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the teachings of JP Patent and Gottileb in order to provide for a culture medium comprising monobasic potassium phosphate, ammonium chloride, magnesium sulfate, saccharose and water for culturing yeast since all of the ingredients for the culturing and testing are disclosed by the cited prior art. One of skill in the art would have been motivated to combine these disclosed ingredients together in a culture medium because they are taught to be used for culturing yeast.

Thus, one of skill in the art would have expected successful results by their combination together in a culture medium. Furthermore, Gottileb teach that yeast can be cultured at a pH of 2.3 and 10.4, note column 5, line 30. The culture medium and/or composition thereof would have been expected to be useful for food industry installations because the yeast would have been expected to grow on the culture media so disclosed by the cited prior art and thus, their detection in the installations realized via their growth thereupon the culture medium as disclosed by the cited prior art. The claims are rendered *prima facie* obvious over the cited prior art.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

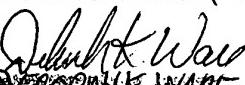
The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DEBORAH K. WARE  
PATENT EXAMINER

Deborah K. Ware  
March 19, 2005